IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4057 OF 2005

IN

CRIMINAL APPEAL NO. 451 OF 2005

Sopan Sakharam Shende ...Applicant

V/s.

The State of Maharashtra ...Respondent

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Mr. Prakash Naik. Advocate the applicant.

Mr. S.R. Shinde, A.P.P. for the State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATE OF RESERVING THE ORDER : 21.07.2005

DATE OF PRONOUNCING THE ORDER : 17.08.2005

P.C.:-

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant was working as Revenue Circle Inspector. The applicant demanded Rs.2000/- from the complainant for making necessary mutation entries. A complaint was made. After going through the evidence adduced by the prosecution, the learned Special Judge, Greater Bombay by judgment and order dated

15.04.2005 convicted the applicant in Special Case No. 13 of 2002, for the offence under Sections 7 and 13(1) (d) r.w. 13(2) of the Prevention of Corruption Act, 1988.

3. Being aggrieved by the said judgment and order dated 15.04.2005 convicting the applicant, the applicant preferred Criminal appeal No.451/2005 before this Court. Initially no prayer was made for suspension of conviction or sentence and only prayer was made for bail, which prayer came to be granted by this Court. Now this application has been preferred for suspension of conviction.

4. The learned counsel for the applicant has submitted that in appropriate cases the High Court on being satisfied about the need for suspending the order of conviction can grant interim stay in respect of the order of conviction. In support of his contention he has placed reliance on the decision of the Supreme Court in the case of **K.C. Sareen Vs. C.B.I. Chandigarh reported in (2001) 6 SCC 584**. There can be no quarrel with the proposition that if the High Court is satisfied about the need of suspending the order of conviction it can grant interim stay. However, the main question is whether in the facts of the present case it can be said to be an appropriate case to suspend the conviction.

5. The learned counsel for the applicant has submitted that pending appeal if the conviction is not suspended the applicant will suffer irreparable loss because he may be suspended and hence the conviction should be suspended.

6. In the case of K.C. Sareen (supra) the Supreme Court has held that if a public servant who is convicted becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. It is further held that when a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself. Hence, it is necessary that the Court should not aid the public servant who stands convicted for corruption charges to hold any public office until he is exonerated after conducting a

judicial adjudication at the appellate or revisional level. It is to be noted that in the present case the applicant has been convicted in a case of corruption.

7. Useful reference may be made to the decision of the Supreme court in the case of **State of Tamil Nadu Vs. A Jaganathan reported in (1996) 5 SCC 329**. In the said case it is observed that power to suspend the conviction and sentence pending appeal/revision can be exercised only when damage caused to the appellant/revisionist cannot be undone if he ultimately succeeds. It is further observed that trifling matters should not be taken into consideration and loss of stipend etc. are not valid considerations for suspension of conviction. It is further observed that moral conduct of the public servant is a relevant consideration and the High Court had not taken it into consideration. In the said case, it was further held that in such cases the discretion to suspend the conviction cannot be exercised. In the said case a Police Inspector came to be convicted U/sec. 392, 218 and 466 and other public servants were convicted under the provisions of Prevention of Corruption Act and hence, the High Court's order of suspension of sentence came to be set aside.

8. In a recent decision the Supreme Court in the

case of **State of Maharashtra Vs. Gajanan & Anr. reported in 2004 AIR SCW 80**, has held that the power to suspend the order of conviction should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of conviction the Court should not suspend the operation of the order of conviction. The Court has a duty to look at all aspects including the ramification of keeping such conviction in abeyance. The Supreme Court further observed that the High Court failed to note the directions of the Supreme Court in the case of **K.C. Sareen,** wherein it is held that it is only in very exceptional cases that the Court should exercise such power of stay. The Supreme Court in the case of State of Maharashtra V/s. Gajanan (supra) has further observed that the High Court had not taken into consideration any of the above factors while staying the conviction and hence, the order of suspension of conviction came to be set aside.

9. Merely because the convicted person files an appeal and challenges the order of conviction, the Court should not suspend the operation of the order of conviction. The Court has a duty to look at all aspects including the ramification of keeping such a conviction in abeyance. In my view, the conduct on the part of the applicant while holding the post of Circle Inspector, would send a wrong message to the citizens in the area. Moreover, it would also send a

wrong message to the other officers and staff in the same office if the order of conviction is suspended.

10. Considering all the facts of this case, I do not think that this a fit case wherein the conviction of the applicant can be suspended, hence the application is rejected.

11. Criminal application is disposed of.

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